

1 Francis X. Hardiman Bar #140504  
Margaret M. Cahill Bar #138231

2 HARDIMAN & CAHILL  
3 Attorneys at Law  
1560 Brookhollow  
Suite 114  
4 SANTA ANA, CALIFORNIA 92705  
(714) 556-2233  
Facsimile (714) 556-5223

Richard S. v. Dept. of Developmental Serv. of Cal.  
  
MR-CA-004-001

5 Attorneys for: Richard S. et al.

6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11 RICHARD S., CYNTHIA R., VALDINA )  
R., and ROES 1 through 800, )  
12 individually and on behalf of all )  
those similarly situated by )  
13 WILLIAM CABLE, M.D. as Guardian )  
ad Litem )

14 Plaintiffs, )

15 vs. )

16 DEPARTMENT OF DEVELOPMENTAL )  
SERVICES OF THE STATE OF )  
17 CALIFORNIA, FAIRVIEW )  
DEVELOPMENTAL CENTER, SOUTH )  
18 COAST REGIONAL PROJECT, HARBOR )  
REGIONAL CENTER, REGIONAL CENTER )  
19 OF ORANGE COUNTY, SAN DIEGO )  
REGIONAL CENTER, SOUTH CENTRAL )  
20 LOS ANGELES REGIONAL CENTER, )  
WESTSIDE REGIONAL CENTER, DENNIS )  
21 G. AMUNDSON, as Director of the )  
DEPARTMENT OF DEVELOPMENTAL )  
22 SERVICES STATE OF CALIFORNIA, )  
HUGH KOHLER, as Executive )  
23 Director of FAIRVIEW )  
DEVELOPMENTAL CENTER, LILIA TAN )  
24 FIGUEROA, M.D., as Medical )  
Director of FAIRVIEW )  
25 DEVELOPMENTAL CENTER, DAWN )  
LEMONDS as director of SOUTH )  
26 COAST REGIONAL PROJECT, and Does )  
1 through 500, inclusive, )

27 Defendants )  
28

CASE NO:

EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND APPLICATION TO SHOW CAUSE  
RE: PRELIMINARY INJUNCTION;  
MEMORANDUM OF OPPOSING  
COUNSEL [Local Rule 7.18]

Date: March 20, 1997  
Time: 10:00 a.m.  
Place: Federal District  
Court, Santa Ana, California

1 JURISDICTION

2 1. This action is brought pursuant to Title V §503 the  
3 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12203(a)  
4 and (b) and 42 U.S.C. § 12203(c), the Civil Rights Act of 1991,  
5 42 U.S.C. §§ 1983, 1988, the Court's supplemental jurisdiction,  
6 28 U.S.C. § 1367.

7 2. The jurisdiction of this Court is predicated on (a)  
8 28 U.S.C. §§ 1343(3) and (4) and 1331, the All Writs Act, 28  
9 U.S.C. §1651(a) and, (b), F.R.Civ.P. 65.

10 VENUE

11 3. Venue is proper in the United States District Court  
12 for the Central District of California because a substantial  
13 part of the events or omissions giving rise to the claims herein  
14 occurred in this District.

15 STANDING

16 4. William Cable, M.D. for and on behalf of Plaintiffs  
17 CYNTHIA R., VALDINA R. and those ROES 1 through 800, inclusive,  
18 who are similarly situated, as their Guardian ad Litem for  
19 purposes of this action, asserts the right to bring a claim for  
20 injunctive relief because of the close doctor/patient  
21 relationship between Cable and the named Plaintiffs herein and  
22 because of the fiduciary relationship arising out of Cable's  
23 duties and obligations as Chief of the Medical Staff at Fairview  
24 Developmental Center which circumstances provide an exception to  
25 the rule of jus tertii as set forth in Singleton v. Wulff, 428  
26 U.S. 106, 96 S.Ct. 2868, 49.LEd.2d 826 (1976).

27 ADMINISTRATIVE REMEDIES

28 5. Plaintiffs elected not to pursue administrative

1 remedies. Pursuant to 28 C.F.R. PART 35 "at supplementary  
2 information" it states: "This regulation implements subtitle A  
3 of title II of the ADA, which applies to State and local  
4 governments". 28 C.F.R. PART 35, §35.172 further states:

5 "The Act requires the Department of Justice  
6 to establish administrative procedures for  
7 resolution of complaints, but does not  
8 require complainants to exhaust these  
9 administrative remedies. The Committee  
10 Reports make clear that Congress intended to  
11 provide a private right of action with the  
12 full panoply of remedies for individual  
13 victims of discrimination. Because the Act  
14 does not require exhaustion of  
15 administrative remedies, the complainant may  
16 elect to proceed with a private suit at any  
17 time."

#### 18 NECESSITY FOR TRO

19 6. Patients at Fairview Developmental Center, Costa Mesa,  
20 California are being discharged to community placement where the  
21 known mortality rate, in California, is 72% higher than the  
22 institution. There have been increasing reports of death and  
23 injuries in the community reported to Fairview physicians within  
24 the past three months believed to be the result of expedited,  
25 inappropriately placed discharges. The Chief of the Medical  
26 Staff was retaliated against and suspended for ten days without  
27 pay when opposing client discharges

28 7. Regional centers, responsible for selecting clients

1 for discharge have been subject to the threat of financial  
2 penalties for not meeting Coffelt exit quotas.

3 8. Clients without conservators nor physicians are  
4 "authorized representatives" with standing to invoke "Fair  
5 Hearings under California Welfare & Institutions Code §4700 et  
6 seq.

7 9. Clients, especially those without conservators, are  
8 being denied basic due process in the exiting process.

9 10. Regional Centers are preferentially selecting clients  
10 without parents or conservators for discharge.

11 11. Patients without adequate representation, due process,  
12 or remedies to prevent inappropriate placement on medical or  
13 safety grounds, are being placed at an immediate and  
14 unreasonable risk of harm.

15 12. Fairview has begun to accelerate FDC discharges to  
16 community placement in anticipation of a large influx of  
17 clients, estimated at 300 residents, being transferred from  
18 Camarillo State Hospital to Fairview. The State of California  
19 announced the proposed closing of Camarillo State Hospital, in  
20 Ventura County, for this summer.

21 13. Three to four weeks for noticed motion may cost some  
22 lives.

23 I

24 REQUESTED RELIEF

25 14. A temporary restraining order and preliminary  
26 injunction restraining the Department of Developmental Services  
27 of the State of California (DDS), Fairview Developmental Center  
28 (FDC), South Coast Regional Project (SCRIP) and five (5) Regional

1 Centers (RC) from conducting any "exit conferences", at FDC or  
2 elsewhere, regarding planned discharge of FDC developmentally  
3 disabled clients from FDC to non-institutional placement during  
4 the pendency of this action.

5 15. A temporary restraining order and preliminary  
6 injunction restraining Defendants from discharging or  
7 transferring from FDC to other California developmental centers  
8 or to non-institutional placement any adult client who has no  
9 conservator of the person, during the pendency of this action.

10 16. Defendants undertook expedited discharge of 2000  
11 clients from State Developmental Centers (a.k.a. State  
12 Hospitals) starting in mid 1993 pursuant to a class action  
13 settlement known as COFFELT. COFFELT called for discharge of  
14 these patients over five years.

15 17. Beginning in 1994 Defendants were appraised of studies  
16 showing, in California, almost double the mortality in the  
17 community compared to the institutions. The studies had been  
18 performed at the "Life Expectancy Project" at the University of  
19 California, Riverside by Dr. David Strauss, a Cambridge trained  
20 statistician, under a National Institutes of Health (NIH) grant.

21 18. Increasing reports were filtering back to DDS and RC  
22 physicians of disturbing cases of death and injury. Newspapers  
23 reported deaths of large numbers of children in community homes.

24 19. Notwithstanding the warning signals in the published  
25 scientific literature and increased anecdotal reports, or  
26 perhaps because of them, Defendants accelerated their already  
27 expedited discharge plans and completed all COFFELT placements  
28 in mid 1996 a full two years ahead of schedule. Expedited

1 discharges were facilitated by threatened imposition of  
2 financial penalties against Regional Centers for failure to meet  
3 COFFELT quotas.

4 20. Beginning in 1994 certain staff physicians at FDC,  
5 primarily the former and present Chiefs of the Medical Staff,  
6 opposed at "exit conferences", or by way of declaration in a  
7 pending state court action, certain COFFELT discharges on  
8 medical and safety grounds.

9 21. Almost immediately thereafter, the present and  
10 previous Chiefs of the Medical Staff, at FDC, were charged with  
11 either incompetence, or in the case of Harvard trained and NIH  
12 alumnus, Dr. Cable, with violations of California Government  
13 Code §19572, disciplined pursuant to California Government Code  
14 §19574, suspended without pay and transferred from COFFELT "exit  
15 conference duties" and by other acts retaliated against for  
16 alleged "dishonesty", "inexcusable neglect of duty" and  
17 "disregard of the Department's well established goal of  
18 community placement of clients".

19 22. None of these physicians are "disability rights  
20 activists"; none had opposed State policy and their resistance  
21 to discharge was based solely on medical and safety grounds in  
22 individual cases.

23 23. Most of the remaining disabled at FDC are severely or  
24 profoundly retarded, with serious medical problems, dual  
25 diagnosed with a coexisting mental illness, on high doses of  
26 multiple medications and incompetent to consent to transfer.

27 24. Most are non-judicial "voluntary" admissions and have  
28 never had a judicial determination of competency.

1           25. At "exit conferences" physicians are not "authorized  
2 representatives" (W&I §4701.6) to object to community placement  
3 (W&I §4803) in cases where such objection is appropriate.

4           26. At "exit conferences" parents or family, who are not  
5 conservators, are not "authorized representatives" (W&I §4701.6)  
6 to object to community placement (W&I §4803) in cases where such  
7 objection is indicated.

8           27. Many of the parents of adult "clients" have died, are  
9 themselves too elderly or infirm to participate in exit  
10 conferences and, even if alive, receive no notice of such  
11 conference.

12           28. When no objection from an authorized representative is  
13 received at an exit conference a certificate of "no objection"  
14 is signed and issued by a regional center representative. This  
15 certificate authorizes the community home to accept transfer of  
16 the client from the hospital.

17           29. The State and DDS/RC have a financial stake in  
18 expediting downsizing and/or closure of State Developmental  
19 Centers.

20           30. Defendants have a significant conflict of interest in  
21 the discharge process and can not be relied upon to act, and  
22 have not acted, in the best interests of Plaintiffs.

23           31. Based upon COFFELT discharge data for this geographic  
24 area it is estimated that there are approximately 150 to 200 FDC  
25 clients who are without parent or guardian "involved" and who  
26 have no conservator.

27           32. Clients, without guardians or conservators, are denied  
28 access to State administrative remedies. In those cases where

1 such clients parents are deceased or the family has abandoned  
2 them and they are indigent, which most are, they have no means  
3 to initiate a civil actions even if they had been provided with  
4 State remedies.

5 33. California's statutory scheme unfairly discriminates  
6 against adult clients who are without conservators who have no  
7 means to object to transfer.

8 34. Community placement in California represents a  
9 significantly increased risk to life and liberty. Adult  
10 clients, without conservators, are denied adequate consideration  
11 concerning fundamental rights at exit conferences thereby  
12 violating Constitutional Due Process. This group is denied  
13 State administrative remedies and Defendants have denied  
14 applicability of the American with Disabilities Act thereby  
15 foreclosing Federal administrative and civil remedies.

16 35. Defendants have denied the validity of the scientific  
17 and anecdotal reports. In taking this position they have not  
18 promulgated regulations to correct the quality assurance  
19 problems in the system and in fact have delayed such action.

20 36. The totality of these circumstances represents an  
21 immediate threat of irreparable harm to the lives of hundreds of  
22 clients at FDC and thousands throughout the system.

### 23 24 III

#### 25 INADEQUATE LEGAL REMEDY

26 37. Plaintiffs can not be adequately compensated at law  
27 for loss of life or limb.



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. GENERAL AUTHORITY

3 38. The power of the federal court to issue injunctions is  
4 controlled by historical equitable doctrines of "irreparable  
5 harm" and "inadequate remedy at law" Miller v. California  
6 Pac.Med.Ctr., 991 F.2d. 536, 540 (9th Cir. 1993).

7 39. Courts of law and equity have merged. Since "There is  
8 but one form of civil action in federal court" (F.R.Civ.P. 2)  
9 Federal courts have inherent equitable jurisdiction in actions  
10 properly before them.

11 40. "Absent the "clearest command to the contrary" from  
12 Congress, federal courts retain equitable powers to issue  
13 injunctions in any suit over which they have jurisdiction and in  
14 which equitable relief is otherwise proper" Califano v.  
15 Yamasaki, 442 U.S. 682, 705, 99 S.Ct. 2545, 2559 (1979).

16 41. In order for an injunction to issue a party must  
17 establish the court's subject matter jurisdiction F.T.C. v.  
18 H.N.Singer, Inc. 668, F.2d. 1107, 1109 (9th Cir. 1982).

19 42. However, Federal Courts have authority to issue  
20 injunctions pending resolution of jurisdictional issues United  
21 States v. UMW 330 U.S. 258, 293, 67 S.Ct. 677, 695 (1947);  
22 Fernandez-Roque v. Smith 671 F.2d. 426, 431 (11th Cir. 1982).

23 43. F.R.Civ.P. 65 is not an independent basis for  
24 jurisdiction but sets forth the types and procedures for  
25 obtaining injunctive relief.

26 44. F.R.Civ.P. 65(b) states: "A temporary restraining  
27 order may be granted without written or oral notice only if  
28 ....."

1 45. F.R.Civ.P. 65(a) states: "No preliminary injunction  
2 shall issue without notice to the adverse party."  
3

4 B. AUTHORITY FOR INJUNCTION UNDER THE ADA

5 46. When an injunction sought pursuant to a federal claim  
6 the particular statute must be examined to determine whether  
7 injunctive relief is authorized. Religious Technology v.  
8 Wollersheim 796 F.2d. 1076,1079 (9th Cir. 1986).

9 47. Title II of the ADA at 42 U.S.C. §12202 provides:

10 "A State shall not be immune under the eleventh  
11 amendment to the Constitution of the United States  
12 from an action in Federal or State court of  
13 competent jurisdiction for a violation of this Act. In  
14 any action against a State for a violation of the  
15 requirements of this Act, remedies (including  
16 remedies both at law and in equity) are available for  
17 such a violation to the same extent as such  
18 remedies are available for such a violation in an  
19 action against any public or private entity other than  
20 a State."

21 48. Therefore, it would appear that Congress by its  
22 express statement providing for a remedy in equity authorized  
23 the provision of injunctive relief under the ADA. Further,  
24 Congress' intent to exclude injunctive relief must be clear as  
25 "a strong presumption militates against any such finding".  
26 Reebok Int'l, Ltd. v. Marnatech Enterprises, Inc., 970 F.2d. 552,  
27 561 (9th Cir. 1992). Additionally, the express language in the  
28 statute that such remedy is available "to the same extent" as

1 available in any action against any public/private entity urges  
2 the conclusion that a temporary restraining order and  
3 preliminary injunction are authorized.

4 49. All injunctions must meet the general requirements of  
5 "irreparable injury" and "inadequate legal remedies". Arcamuzi  
6 v. Continental Airlines, Inc., 819 F.2d. 935, 937 (9th Cir.  
7 1987).

8 50. Temporary restraining orders and preliminary  
9 injunctions require Plaintiffs, in the 9th Circuit, to satisfy  
10 additional requirements articulated as the "Traditional Test" or  
11 the "Alternative Test".

12 51. Both tests require a showing of a chance of success on  
13 the merits, not less than a "possibility" of irreparable injury  
14 and a balancing of the hardships to the parties. The  
15 traditional test also factors in whether any public interest  
16 favors granting the injunction. American Motorcyclist Ass'n v.  
17 Watt 714 F.2d. 962, 965 (9th Cir.1983). The two tests have been  
18 called "a continuum of equitable discretion whereby the greater  
19 the relative hardship to the moving party, the less probability  
20 of success must be shown". Regents of Univ. of Calif. v. ABC,  
21 Inc., 747 F.2d. 511 (9th Cir. 1984).

22 52. "The critical element in determining the test to be  
23 applied is the relative hardship to the parties. If the balance  
24 of harm tips decidedly toward the Plaintiff, then the Plaintiff  
25 need not show as robust a likelihood of success on the merits as  
26 when the balance tips less decidedly". State of Alaska v. Native  
27 Village of Venetie, 856 F.2d. 1384, 1389 (9th Cir. 1988).

28 53. The "balance of harm" evaluation should precede the

1 "likelihood of success analysis ... because until the balance of  
2 harm has been determined the court cannot know how strong and  
3 substantial must be Plaintiff's showing of likely success on the  
4 merits. Direx Israel, Ltd. v. Breakthrough Med. Group, 952  
5 F.2d. 802, 813-814 (4th Cir. 1991).

6 C. BALANCE OF HARM

7 54. There is an immediate threat to the life and safety of  
8 clients discharged from Fairview to community placement as shown  
9 by the studies of Dr. David Strauss demonstrating nearly twice  
10 the mortality rate in adults in the community, in California,  
11 compared to the institution. Clients are entitled to  
12 "reasonable safety" Youngberg v. Romeo 457 U.S. 307, 319 (1982).

13 55. The risk in individual cases can not be evaluated when  
14 physicians are retaliated against in attempting to obtain  
15 information relevant to placement such as notification and  
16 attendance of relatives, training of community home care givers  
17 and denial of access to records or communication with regional  
18 center physicians.

19 56. Fairview physicians have provided declarations  
20 regarding increased reports of deaths and injuries. Dr.  
21 Copeland has addressed the serious quality assurance problems in  
22 the system. There is an unreasonable risk of harm to community  
23 placement. Physicians are retaliated against for advocating for  
24 their patients or for attempting to secure the safety of the  
25 community placement by notifying regional center doctors of  
26 deleted material from medical records.

27 57. Notification to parents that exit conferences are  
28 occurring are lax. Physicians are not expected to participate

1 in the decision for discharge (Doroughty Dec.). The remaining  
2 disabled at Fairview, subject to immediate placement, are the  
3 profoundly retarded and the physically involved with serious  
4 medical problems.

5 58. In Heller v. Doe 509 U.S. 312, 333 (1993) the Court  
6 cited Greenholtz v. Inmates of Neb. Penal and Correctional  
7 Complex 442 U.S. 1,13 (1979) as follows: "The function of the  
8 legal process, as that embodied in the Constitution and in the  
9 realm of factfinding is to minimize the risk of erroneous  
10 decisions. Because of the broad spectrum of concerns to which  
11 the term must apply, flexibility is necessary to gear the  
12 process to the particular need; the quantum and quality of the  
13 process due in a particular situation depend upon the need to  
14 serve the purpose of minimizing the risk of error".

15 59. In Heller at 314 the Court stated: The only individual  
16 interest that is protected by the Due Process Clause is an  
17 accurate decision, not a favorable one".

18 60. An accurate decision making process is not being  
19 protected at Fairview.

20 61. Further, a parent, who is not a conservator, nor the  
21 physician are "authorized representatives" pursuant to  
22 California Welfare & Institutions Code (W&I) §4701.6.

23 Therefore, neither person has standing to object to the  
24 placement at exit conferences pursuant to W&I §4803. Nor does  
25 the parent, who is not a conservator, nor the physician have  
26 standing to institute an appeal or invoke "Fair Hearing  
27 Proceedings" pursuant W&I 4700 et seq. Further, there is no  
28 requirement to even notify parents, who are not conservators, of

1 an exit conference.

2 62. Additionally, DDS or regional centers have no  
3 obligation to follow these patients up In Re Borogna 121 Cal.  
4 App.3d 937, 942 "it was pointed out, however, that no statute  
5 requires either the center or Fairview to monitor the placement,  
6 either during the first six months-which are provisional (\$4508)  
7 - or afterward - when Andrew's status as an admittee of Fairview  
8 would expire and he would have no automatic right of  
9 readmission" id. at 942. Therefore it is even more important  
10 that an accurate decision be made at an exit conference.

11 63. There is an immediate threat of irreparable harm from  
12 the lack of Due Process.

13 64. The harm to the Defendants of ten to twenty one days  
14 of restraining discharges from Fairview under these  
15 circumstances is minimal.

16 **D. LIKELIHOOD OF SUCCESS ON UNDERLYING ACTION**

17 65. Plaintiffs have a reasonable success on the underlying  
18 claims.

19 **E. THE ADA APPLIES TO THE STATE**

20 66. 28 C.F.R. PART 35 at "SUPPLEMENTARY INFORMATION" ¶12  
21 states: "This regulation implements subtitle A of title II of  
22 the ADA, which applies to State and local governments".

23 67. Congress reenacted the Rehabilitation Act of 1973 by  
24 passing the ADA, in part, because "the Rehabilitation Act and  
25 its regulations have been practically a dead letter as a remedy  
26 for segregated public services" HELEN L. V. DIDARIA, 46 F.3D  
27 325, 331 (3D CIR.) CERT DENIED - U.S. -116 S.CT. 64, 133 L.ED.2D  
28 26 (1995) CITING COOK, THE AMERICANS WITH DISABILITIES ACT: THE

1 MOVE TO INTEGRATION, 64 TEMP. L. REV. 393, 394-408 (1991).

2 F. THE ADA APPLIES TO INSTITUTIONALIZATION AND TO  
3 DISPARATE TREATMENT AMONG THE DISABLED IN SUCH INSTITUTIONS

4 68. "Congress has stated that "discrimination against  
5 individuals with disabilities persists in such critical areas as  
6 ... institutionalization". 42 U.S.C. §12101 (3). If Congress  
7 were only concerned about disparate treatment of the disabled as  
8 compared to their non-disabled counterparts, this statement  
9 would be a non-sequitur as only disabled persons are  
10 institutionalized". Helen L. v. DiDaria, 46 F.3d 325, 335 (3d  
11 Cir.) cert denied - U.S. -116 S.Ct. 64, 133 L.Ed.2d 26 (1995).

12 69. G. 28 C.F.R. §35.130(d) states: "The  
13 Integration Mandate"

14 "A public entity shall administer services,  
15 programs and activities in the most  
16 integrated setting appropriate to the needs  
17 of qualified individuals with disabilities".

18 70. "28 C.F.R. § 130.35(d) has the force of law". Helen  
19 L. v. DiDaria, 46 F.3d 325, 331 (3d Cir.) cert denied - U.S. -  
20 116 S.Ct. 64, 133 L.Ed.2d 26 (1995). "the ADA and its attendant  
21 regulations clearly define unnecessary segregation as a form of  
22 illegal discrimination against the disabled." Helen L p.332.

23 71. While discrimination between the so called "able  
24 bodied" and the disabled is covered under the ADA so is  
25 discrimination amongst the disabled based upon the severity of  
26 the disability. "Numerous Courts have recognized that both  
27 Section 504 and the ADA prohibit discrimination on the basis of  
28 the severity of a person's disability". Messier v. Southbury  
Training School 916 F.Supp. 133, 141 (D.Conn. 1996). Also citing  
Martin v.Voinovich, 840 F.Supp. 1175, 1191-92 (S.D. Ohio 1993;

1 Jackson v. Stanton Hospital & Training School, 757 F.Supp, 1243,  
2 1299 (D.N.M.1990); Lynch v. Maher, 507 F.Supp. 1268, 1278-1279  
3 n.15 (D.Conn.1981) discrimination on the basis of handicap is  
4 actionable under Section 504.

5 72. At the heart of Plaintiffs, ADA complaint however, is  
6 the denial of access to medical care. By prematurely placing  
7 clients into the community, by denying such patients the  
8 continued benefits of hospital care, before such clients are  
9 well enough or stable enough to take care of themselves then  
10 such clients can not possibly integrate themselves into the  
11 community. If there is anything such as a central theme to the  
12 ADA it is the concept of "integration".

#### 13 STANDING OF CABLE

14 73. The Ninth Circuit in Compassion in Dying v. Roe 96  
15 C.D.O.S. 1507 (1995) granted standing to physicians asserting  
16 the rights of their terminally ill patients in general  
17 850F.Supp. at 1467. "The physicians meet both article III and  
18 jurisprudential standing requirements. See Singleton v. Wulff,  
19 428 U.S. 106, 116-117 (1976) (holding that doctors had standing  
20 to challenge - on behalf of women in general". The court also  
21 cited Doe v. Bolton 410 U.S. 179, 188 (1973).

22 74. Here, Cable was disciplined with 10 day suspension  
23 pursuant to California Government Code §19574 for advocating for  
24 his patients as occurred or was threatened in the above  
25 referenced cases.

#### 26 CONCLUSION


27 75. For the foregoing reasons Plaintiff respectfully  
28 request the Court to grant the temporary restraining order and



1 preliminary injunction.

2 Dated: March 20, 1997,

HARDIMAN & CAHILL  
A Professional Corporation

3  
4 By:   
5 FRANCIS X. HARDIMAN  
6 Attorney for Plaintiffs

7 MEMORANDUM OF OPPOSING COUNSEL

8 1. I was informed on March 19, 1997 by Susan Geanacou,  
9 Esq. of the Department of Developmental Services that a Deputy  
10 Attorney General would be representing the Department of  
11 Developmental Services, Fairview Developmental Center, South  
12 Coast Regional Project to the extent of DDS's involvement with  
13 them, Defendants, Amundson, Kohler, Tan Figueroa and Lemonds.  
14 Susan Geanacou, Esq., Division of Legal Services Department of  
15 Developmental Services, 1600 9th Street Room 340, Sacramento,  
16 CA 95814, (916) 654-3233.

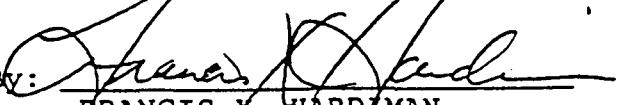
17 2. I was informed that Tom Nixon, Esq., Woodruff,  
18 Spradlin & Smart, 701 S. Parker St., Suite 7000, Orange, CA 92868  
19 Tel: 714/558/7000 would be representing Regional Center of  
20 Orange County.

21 3. Bob Rubin, Esq., BRUMER, RUBIN & WESTON, 3600 Wilshire  
22 Blvd., Suite 1120, Los Angeles, CA 90010, 213/487/7800, might  
23 be representing San Diego Regional Center.

24 4. I contacted all Defendants at least twice on march 19,  
25 1997. No others would confirm attorney representation.

26 Dated: March 20, 1997,

HARDIMAN & CAHILL  
A Professional Corporation

27 By:   
28 FRANCIS X. HARDIMAN  
Attorney for Plaintiffs